

## **Exhibit 5**

FCLALOLHps

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

DAVID LOLA, GERALD RUSH, and  
LISA LEWIS,

Plaintiffs,

v.

13-cv-5008 (RJS)

SKADDEN, ARPS, MEAGHER, SLATE &  
FLOM LLP, et al.,

Defendants.

-----x

New York, N.Y.  
December 21, 2015  
2:30 p.m.

Before:

HON. RICHARD J. SULLIVAN

District Judge

#### APPEARANCES

JOSEPH, HERZFELD, HESTER & KIRSCHENBAUM  
Attorneys for Plaintiffs

BY: DANIEL M. KIRSCHENBAUM, ESQ.  
DENISE A. SCHULMAN, ESQ. (via speakerphone)

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
Attorneys for Defendants

BY: BRIAN J. GERSHENGORN, ESQ.  
STEPHANIE L. ARANYOS, ESQ.

Also Present (via speakerphone): David Lola  
Gerald Rush  
Lisa Lewis

FCLALOLHps

1 (In open court)

2 THE CLERK: 13 Civil 5008, Lola v. Skadden, Arps,  
3 Meagher, Slate & Flom, et al.

4 THE COURT: Have a seat. Let me take appearances.  
5 For the plaintiffs?

6 MR. KIRSCHENBAUM: Good afternoon, your Honor. Marvin  
7 Kirschenbaum for the plaintiffs.

8 THE COURT: Ms. Kirschenbaum and Mrs. Schulman, good  
9 afternoon. The plaintiffs are on the phone; is that right?

10 MR. KIRSCHENBAUM: Yes.

11 THE COURT: We've got them muted for now, but let me  
12 just make sure they're on the line.

13 OK. So Mr. Lola, are you on the line?

14 Mr. Lola?

15 MR. LOLA: David Lola, your Honor?

16 THE COURT: Yes. Can you hear me OK?

17 MR. LOLA: Yes, your Honor.

18 THE COURT: Good. OK. And then Mr. Rush, are you on  
19 the line?

20 MR. RUSH: I am on the phone. Thank you, your Honor.

21 THE COURT: Good. And you can hear me all right also?

22 MR. RUSH: Yes, I can.

23 THE COURT: Good. And then finally, Ms. Lewis?

24 MS. LEWIS: Yes. I'm on the line as well, your Honor.

25 THE COURT: And you can hear me OK. Is that right?

FCLALOLHps

1 MS. LEWIS: Yes.

2 THE COURT: Good. So hopefully the technology will  
3 hold out. We're here for a fairness hearing, which I'll  
4 explain in a moment. If at any point you have difficulty  
5 understanding or hearing what's going on, let me know.

6 Right now what I'm going to do is also take the  
7 appearances of the defendant, or the defendant's counsel. So  
8 if you could state your name for the record.

9 MR. GERSHENGORN: Good afternoon, your Honor. Brian  
10 Gershengorn and Stephanie Aranyos from Ogletree Deakins for the  
11 defendants.

12 THE COURT: Good. Mr. Gershengorn, good afternoon,  
13 and Ms. Aranyos, good afternoon to you.

14 So as I said, we are here for a fairness hearing. In  
15 cases involving the Fair Labor Standards Act, courts are  
16 required before approving a settlement to make sure that it's a  
17 fair and reasonable settlement. And that's because there's a  
18 concern that employees might be at a disadvantage relative to  
19 employers, and so that lack of leverage might induce them to  
20 take less than what they're entitled to under the law. And so  
21 a body of law has developed which indicates that judges like me  
22 should inquire and ascertain whether or not this is a fair and  
23 reasonable settlement, in light of all the considerations,  
24 which I'll talk about in a moment.

25 The focus is really on its fairness from the

FCLALOLHps

1 perspective of the plaintiffs. The law doesn't really care  
2 much about the defendants. I don't mean it to sound callous.  
3 It's just that the presumption is that the employers if  
4 anything have more leverage and therefore we trust that they  
5 will be able to do what's in their own interest. We're a  
6 little more solicitous towards plaintiffs.

7 Most cases, I should note, involving settlements,  
8 don't get courts involved. Relatively few cases have court  
9 involvement in ascertaining the fairness of a settlement. So  
10 this is a narrow range of cases where courts get so involved.

11 Let me hear from Mr. Kirschenbaum the terms of the  
12 settlement. I received a letter from the parties, a joint  
13 letter, and a copy of the settlement agreement. But it doesn't  
14 specify all the details of the settlement. And so, as I  
15 mentioned during settlement conference, I want to put that on  
16 the record now. I want to make sure that the plaintiffs know  
17 what the settlement terms are and that they are comfortable  
18 with it. OK. Mr. Kirschenbaum?

19 MR. KIRSCHENBAUM: I think the most important term of  
20 the settlement is not actually set forth in the settlement  
21 except that, in the settlement agreement, it is clear that  
22 defendants will agree to pay the total \$75,000 amount as  
23 recited at this hearing and consistent with previous  
24 correspondence between me and defendants' counsel. And these  
25 numbers have been reviewed by plaintiffs prior to the hearing.

FCLALOLHps

1 THE COURT: Right.

2 MR. KIRSCHENBAUM: Essentially Mr. Lola will receive  
3 \$7,689.25 on a W-2 and \$7,310.75 on a 1099. Ms. Lewis will  
4 receive \$7,527.13 on a W-2 and \$2,483.95 on a 1099. Mr. Rush  
5 will receive \$8,725.88 on a W-2, \$2,879.54 on a 1099.

6 The attorney's fees, payable directly to my firm,  
7 would be \$38,383.50.

8 The nature of the breakdown as discussed with your  
9 Honor but slightly tinkered with since the settlement  
10 conference was, for Mr. Rush, Mr. Rush and Ms. Lewis will each  
11 be receiving the full amount of overtime that they would be  
12 paid, they would be owed had they prevailed on their claims in  
13 this lawsuit, plus 33 percent of the full liquidated damages  
14 amount that they would recover if they were able to prevail on  
15 a claim for liquidated damages.

16 Mr. Lola will be receiving also the full amount of  
17 money that he would have received if he had prevailed on all  
18 the claims of this lawsuit. But he will be getting more than  
19 33 percent of the liquidated, the differential between what  
20 he's actually getting and, say, 133 percent of his base damages  
21 are attributed to the fact that he was the pioneer, if you  
22 will, of this lawsuit, who got an extra, a little less than  
23 \$5,000.

24 THE COURT: Right. But I thought the plan was to  
25 treat liquidated damages the same across all three and then to

FCLALOLHps

1 have in essence a litigation bonus for Mr. Lola since he is the  
2 one who initiated the case and did the heavy lifting early on.  
3 And that's not unusual in cases of this sort.

4 MR. KIRSCHENBAUM: And that's what it is, your Honor.

5 THE COURT: OK. So each is getting the full  
6 compensatory damages that they would be owed if they prevailed  
7 across the board on their wage and hour claims, the  
8 compensatory, and plus 33 percent of the liquidated damages  
9 amount, which is 33 percent of the compensatory.

10 MR. KIRSCHENBAUM: Right.

11 THE COURT: And then Mr. Lola is getting an additional  
12 kicker, so to speak, of how much?

13 MR. KIRSCHENBAUM: It's close to \$5,000. Essentially  
14 it just breaks his number up to \$15,000 from like 10 and  
15 change. I didn't break it out completely separately because  
16 all of that money is being paid to him on a 1099.

17 THE COURT: And what's the significance of that?

18 MR. KIRSCHENBAUM: Well, any money that's not  
19 compensatory damages are payable on a 1099. So his base  
20 overtime amount is \$7,689.25. 33 percent of the liquidated  
21 is -- I could do the math here -- it's about 2500 plus 63 --  
22 about \$2563 and about 8 cents, if my -- which would get him up  
23 to about \$10,200. So the added 4800, if you will, is the bonus  
24 for being the named plaintiff.

25 THE COURT: All right. And the attorney's fees, as

FCLALOLHps

1     you said, were \$38,383.50. In your letter you indicated that's  
2     below, it's approximately 50 percent, or a little more than 50  
3     percent of the attorney's fees on an hourly basis.

4             MR. KIRSCHENBAUM: That's right, your Honor.

5             THE COURT: And what's the rate that you and  
6     Ms. Schulman and others charge?

7             MR. KIRSCHENBAUM: That would be using the two primary  
8     timekeepers, I would say, that account for 99 percent or more  
9     of the time were me and Ms. Schulman. The rate for me is \$450  
10    and the rate for Ms. Schulman is 300, which is previously  
11    approved in this district.

12            THE COURT: Yes. I think that's fair.

13            All right. So let me just start with each of -- I'm  
14    going to start with each of the plaintiffs. So you've heard  
15    the numbers that Mr. Kirschenbaum just recited. Let me make  
16    sure you did hear that. Mr. Lola, you heard what  
17    Mr. Kirschenbaum said?

18            Are we on mute?

19            Mr. Lola?

20            MR. KIRSCHENBAUM: It sounds like we're on mute,  
21    because Mr. Lola had some background noise.

22            THE CLERK: No, you're not.

23            MR. LOLA: Yes, your Honor.

24            THE COURT: That's not the first time you're hearing  
25    the numbers.



FCLALOLHps

1           MR. LOLA: I heard the numbers, your Honor. I muted  
2 my phone.

3           THE COURT: All right. Fair enough.

4           Mr. Rush, you heard the breakdown as it pertains to  
5 you; is that correct?

6           MR. RUSH: Yes, I did, your Honor. That is correct.

7           THE COURT: And you've discussed this before with  
8 Ms. Kirschenbaum or Ms. Schulman, correct?

9           MR. RUSH: Yes, I did.

10          THE COURT: All right. And then finally with respect  
11 to Ms. Lewis, you've also heard the numbers that were recited  
12 by Mr. Kirschenbaum?

13          MS. LEWIS: Yes. And we -- he and I reviewed them  
14 prior to this hearing as well, your Honor.

15          THE COURT: OK, good. So I want to make sure it's not  
16 news to you. And you also heard the number of attorney's fees,  
17 right? And you're all comfortable with that.

18          MS. LEWIS: Yes.

19          MR. RUSH: Yes, your Honor.

20          THE COURT: All right. So in order to determine  
21 whether this is a fair settlement, I have to consider several  
22 things, the first of which, I guess, is whether or not this  
23 settlement is the result of an arm's-length negotiation, which  
24 I think clearly it is. This is a case that's lasted a while.  
25 It went all the way up to the circuit before coming back to me.

FCLALOLHps

1 Both sets of lawyers are very good at what they do, and I have  
2 no reason to think that they did anything other than really  
3 fight this case zealously. And I use the word "fight" in a  
4 positive sense. They each represented their clients zealously  
5 and hard and tried to get the best resolution that they thought  
6 they could get. So I certainly think it's been the result of  
7 an arm's-length negotiation.

8 Another consideration is whether this is fair  
9 substantively, as opposed to procedurally. In other words, is  
10 this a fair settlement? That's a hard thing to say sort of in  
11 the abstract. Every settlement turns on the specifics. And so  
12 I have to consider how this settlement relates to what the case  
13 would look like, what the resolution would be if the case had  
14 gone completely the plaintiffs' way at trial. I have to then  
15 consider the potential for litigation risk, in other words, the  
16 potential that the plaintiffs could lose this case, which I  
17 guess they kind of did in front of me the first time, before it  
18 came back down.

19 I have to consider the effect of the time value of the  
20 money involved. A litigation can take a long time. It can be  
21 costly. It can require some up-front costs. There can be a  
22 lot of delay involved for people who perhaps want to get paid  
23 sooner rather than later.

24 I have to consider the solvency of defendants, which I  
25 don't think is really an issue here, though sometimes it is and

FCLALOLHps

1 has to be considered. The prospect of a settlement now as  
2 opposed to a victory but little ability to collect later, these  
3 are all legitimate considerations.

4 And so let's, I guess sort of considering those  
5 things, let me ask each of the plaintiffs, are they comfortable  
6 with this settlement? Do you think this is a fair settlement?  
7 Mr. Lola, I'll start with you.

8 MR. LOLA: Yes, your Honor. I believe it's a fair  
9 settlement.

10 THE COURT: And you've thought about all these factors  
11 that I just mentioned?

12 MR. LOLA: Yes, your Honor.

13 THE COURT: All right.

14 Mr. Rush, I'll ask you the same question. Again, a  
15 fair settlement is not necessarily the best possible settlement  
16 but a fair settlement in light of all the different  
17 considerations. What do you think?

18 MR. RUSH: I think it's fair, your Honor, yeah.

19 THE COURT: All right. And then finally, Ms. Lewis,  
20 do you have any thoughts with respect to the fairness of the  
21 settlement?

22 MS. LEWIS: I think it's a fair settlement, all things  
23 considered, your Honor. Thank you.

24 THE COURT: OK. In terms of the money, I agree, I  
25 think that this is a case that I had originally dismissed. I

FCLALOLHps

1 think there is at least a significant risk that after discovery  
2 and either summary judgment motions or a trial, that there is  
3 at least a potential that there would be no recovery. And  
4 that's not an insubstantial risk. I think it was a very real  
5 risk.

6 In terms of the best possible settlement, according to  
7 the lawyers and what's been represented to me, this is a  
8 hundred cents on the dollar in terms of the overtime wages.

9 Now, if the plaintiffs could demonstrate that the  
10 violations were willful, this was a willful violation of the  
11 federal Fair Labor Standards Act, then there would be an  
12 entitlement to liquidated damages that would double those  
13 compensatory damages, but I think willfulness here, as  
14 suggested in the letter from counsel, was certainly not a  
15 slam-dunk. I think it was really an issue of first impression.  
16 No court in this district has resolved an issue involving  
17 lawyers like this one. I guess there is a case kicking in  
18 front of Judge Abrams, but she hasn't ruled yet on summary  
19 judgment. So I think this is one where there might have been  
20 good arguments as to why, even if the reliability liquidated  
21 damages might not be appropriate.

22 So it seems to me an award that includes a hundred  
23 cents on the dollar for the overtime, in terms of compensatory,  
24 and 33 cents on the dollar for liquidated damages, is a pretty  
25 good settlement, dollar-wise.

FCLALOLHps

1           Often court are approving settlements in which the  
2 attorney's fees are coming out of the plaintiff's share of the  
3 settlement. That's not the case here. Plaintiffs are getting  
4 their money clear before the lawyers collect a nickel. So that  
5 strikes me as fair in terms of the dollars.

6           One issue that I think we should discuss is that the  
7 settlement agreement has two provisions which have been not  
8 uniformly accepted in this district. And that relates to two  
9 things. One is a requirement of confidentiality, in essence a  
10 sort of a gag order that prohibits the parties, particularly  
11 the plaintiffs, from really discussing this case, other than to  
12 say that the case was resolved. It's a very broad  
13 confidentiality provision of the sort that other judges in this  
14 court have rejected.

15           In addition, there is a very broad waiver of rights  
16 provision that basically says that plaintiffs agree to forgo  
17 and resolve any and all claims that they may have against the  
18 defendants, including claims known or unknown, which is very  
19 broad and some courts have certainly balked at that. So I may  
20 ask the lawyers, or maybe Mr. Kirschenbaum or Ms. Schulman, to  
21 talk about that. We discussed this a little bit at the  
22 settlement conference. But there is certainly some case law  
23 that goes the other way on this. And I'm not aware of any  
24 written opinions that have approved a settlement including  
25 terms like this, which is not to say that courts haven't

FCLALOLHps

1 approved broad confidentiality and waiver provisions. But  
2 there has been no written opinion expressly addressing this  
3 that I'm aware of in this district.

4 So, Mr. Kirschenbaum, first of all, are you aware of  
5 any other cases that sort of affirm or approve a settlement  
6 that includes such broad waiver and confidentiality provisions?

7 MR. KIRSCHENBAUM: There is a decision recently by  
8 Judge Cott --

9 THE COURT: You're right. Judge Cott declined to  
10 approve the broad waiver provision but accepted the -- no, vice  
11 versa -- accepted the broad waiver provision on the facts  
12 before him but didn't accept the broad confidentiality  
13 provision. The other cases, other than the Judge Pauley, seems  
14 to be in these otherwise. But he's not alone. Judge Kaplan  
15 has one and I guess there are a couple of others. So I don't  
16 care which order you take them, but do you have a preference?

17 MR. KIRSCHENBAUM: Yes. I will start with the waiver  
18 issue. I don't know specifically of a case that rejects  
19 general release where the general release is mutual, in other  
20 words, where the plaintiffs are releasing all claims against  
21 the defendants and the defendants in turn release any claims  
22 against the plaintiffs.

23 THE COURT: Are there any claims against the  
24 plaintiffs? There are no counterclaims in this case, right?

25 MR. KIRSCHENBAUM: There are no counterclaims, and the

FCLALOLHps

1 same way that there are no other claims asserted by the  
2 plaintiffs against the defendants, there are no claims  
3 asserted -- there are no other live claims, in either  
4 direction. The nature of the release is simply very clearly a  
5 quid pro quo release of claims from one side to the other.

6 I will note that the release is typically something  
7 that is more of a sticking point for the defendants in exchange  
8 for the favorable settlement. Here the plaintiffs were willing  
9 to agree to it. My understanding of the law is that this is  
10 acceptable, in light of its mutual nature, especially in light  
11 of Judge Cott's opinion. I am not aware of any court that  
12 deals specifically with the issue of a release that is mutual  
13 and rejected.

14 I think that that might be called added consideration  
15 too.

16 With respect to the nondisclosure, your Honor refers  
17 to it as a broad nondisclosure. I think it's at least a little  
18 less broad than many of the confidentiality agreements that I  
19 have seen rejected. The first and foremost and primary  
20 confidentiality terms are a restriction on plaintiffs' counsel  
21 as opposed to plaintiffs themselves. The plaintiffs  
22 themselves, it seems to me that the main restriction on them is  
23 contacting media or using social media regarding this  
24 settlement.

25 Now, again, your Honor, I don't have a strong feeling

FCLALOLHps

1 about how this should go, other than this is what defendants  
2 wanted as part of the settlement and my clients agreed to it in  
3 exchange for consideration. I think that I'll defer to  
4 whatever defendants' position is with respect to the  
5 public-policy ramifications of it. We did have some sort of  
6 session prior to -- during the settlement conference to try and  
7 get a sense of what your Honor's position was on it, though  
8 admittedly your Honor certainly preferred this fairness hearing  
9 to make the ultimate decision.

10 I don't think it's that broad, and, unlike the  
11 specific examples mentioned in the Cheeks decision in the  
12 Second Circuit, does not contain a liquidated damages provision  
13 if it's violated. So it's not particularly troublesome to me  
14 as plaintiff's counsel. But, again, I would defer to  
15 defendants' arguments with respect to the public-policy  
16 ramifications of it.

17 THE COURT: Do defendants wish to speak to the  
18 public-policy arguments?

19 MR. GERSHENGORN: I think, your Honor, we would agree  
20 certainly on the waiver issue. Magistrate Judge Francis has a  
21 recent, November 5, 2015 decision in the Suarez matter going to  
22 the mutuality of the release, and since it is mutual release  
23 based upon mutuality, at least in that very short opinion,  
24 Magistrate Judge Francis says he agreed with the settlement  
25 based upon mutuality of release.



FCLALOLHps

1           In regards to the confidentiality provision, we do  
2    think that it's certainly different than the case law that's  
3    put forward. We think Cheeks is distinguishable because the  
4    other factors that are also encompassed within Cheeks are not  
5    present here, plaintiffs' counsel getting between 43 and 43.6  
6    percent of the total settlement payment. We don't have the  
7    broad language of the confidentiality provisions that were  
8    spoken about in Cheeks.

9           We also think, like Mr. Kirschenbaum said, the vast  
10   majority of limitations are on plaintiffs' counsel here, less  
11   so on plaintiffs themselves. Plus, from a policy perspective,  
12   these are licensed attorneys that are represented by the  
13   certainly capable counsel, Mr. Kirschenbaum here. And we don't  
14   deem this to be a particularly offensive provision within the  
15   settlement agreement.

16           THE COURT: All right. Thanks.

17           Let me just make sure that the plaintiffs understand  
18   what we're talking about. Do each of you understand that there  
19   is a provision -- it's a nonmonetary provision in this  
20   settlement agreement -- that says that there are restrictions  
21   on what you and your lawyers can say about this settlement and  
22   how you can say it? And then there also is a broad waiver of  
23   other claims; you waive any claims against the defendants,  
24   including claims you may not know about right now, and they  
25   waive any claims they may have against you, against also

FCLALOLHps

1 including unknown causes of action or causes of action unknown  
2 as of this time. So pretty broad going both ways. So that's  
3 what the lawyers are talking about when they say it was a  
4 mutual or is a mutual waiver provision.

5 So each of you understand that? Mr. Lola?

6 MR. LOLA: Yes, your Honor. I understand that.

7 THE COURT: And you are comfortable with it?

8 You're comfortable with that, Mr. Lola?

9 Mr. Lola, are you comfortable with those provisions in  
10 the agreement? I just want to make sure you're aware of them  
11 and you're OK with them.

12 MR. LOLA: Sorry, your Honor. Could you repeat the  
13 question for me?

14 THE COURT: Sure. You told me you're aware of those  
15 provisions. And you're comfortable with them, as being fair  
16 and consistent with a fair settlement?

17 MR. LOLA: Yes, your Honor.

18 THE COURT: OK.

19 Mr. Rush, same question to you.

20 MR. RUSH: Yes. I'm aware of the provisions and it's  
21 fair enough.

22 THE COURT: OK. You're comfortable with it.

23 MR. RUSH: Yeah.

24 THE COURT: All right. And then finally, Ms. Lewis?

25 MS. LEWIS: Yes, your Honor, I'm aware of the

FCLALOLHps

1 provision, and in light of the full settlement I am comfortable  
2 with them.

3 THE COURT: All right. I'm comfortable with them too.  
4 I will say, I'm not aware of anything in the Fair Labor  
5 Standards Act or in the case law surrounding it that would  
6 suggest that there should be a per se prohibition on a broad  
7 waiver provision, mutual or even nonmutual, or of a  
8 confidentiality provision or a gag provision. It seems to me  
9 that the Court should be assessing every settlement on its own  
10 terms and assessing whether it's fair. And just as plaintiffs  
11 are free and courts are frequently known to approve settlements  
12 that are for less than a hundred cents on the dollar, in light  
13 of various considerations including risk, it seems to me that  
14 plaintiffs should also be free to negotiate other nonmonetary  
15 interests in pursuit of the final settlement. And so I think  
16 that -- I guess that's a starting point for me.

17 In terms of the confidentiality or the gag provision,  
18 since the plaintiffs would be free not to discuss these things  
19 if they wanted to prospectively, they would be free not to  
20 answer questions from certain sources if they chose not to. I  
21 don't see why on earth they wouldn't be entitled to, in  
22 advance, say, we will not do those things, as part of a  
23 settlement. I don't think that that's unconscionable or  
24 against public policy, at least not in all circumstances, and  
25 certainly not in this settlement, in the context of this

FCLALOLHps

1 settlement.

2 Similarly, with respect to the waiver of claims, I  
3 think it's certainly possible to imagine a scenario where that  
4 might be against public policy or might be improper and thereby  
5 render a particular settlement unfair or unreasonable. I don't  
6 think that's a per se truth. And I don't think, in the context  
7 of this settlement, that there is anything improper about the  
8 very broad waiver language that affects both parties, the  
9 defendants and the plaintiffs, in order to have a complete and  
10 total settlement that resolves all outstanding claims and puts  
11 this thing to bed. I think that's not uncommon in litigation  
12 of all kinds. And I think it is clearly desirable in many Fair  
13 Labor Standards Act claims.

14 So I can't say that this settlement, considered as a  
15 whole, with all its various parts, is unfair. And so therefore  
16 I am, unlike perhaps some of my colleagues, who seem to have  
17 adopted what appear to be per se rules, I refuse to do that,  
18 and I think this is, as written, a fair settlement, in light of  
19 all the considerations that we've talked about and that there  
20 are also discussed in case law.

21 So let me now turn to the attorney's fees. The  
22 attorney's fees are a little over \$38,000. I guess it's all  
23 relative. That sounds like a lot of money to some folks and  
24 for other folks it sounds like a pittance. I think certainly  
25 that, in terms of the hours worked and in terms of the fees,

FCLALOLHps

1     that are reasonable fees, I think Mr. Kirschenbaum and  
2     Ms. Schulman and their firm are the best in breed -- of firms  
3     doing this kind of work. There are a lot of good ones, but I  
4     think this is as good as any. And I'm not stroking them. I  
5     really do believe that and I've said it before. So I think the  
6     rates that they charge per hour are not crazy. I think they're  
7     justified.

8             I think the number of hours worked also strike me as  
9     appropriate. This case took a lot of work. It went all the  
10    way up to the Second Circuit, where they won. And then it came  
11    back down.

12            So I think these fees, on balance, in consideration of  
13    all the different factors that a court is asked to consider, in  
14    assessing the reasonableness of attorney's fees, they strike me  
15    as very fair and well earned.

16            So I have no problem with the attorney's fees. It  
17    sounds like the plaintiffs don't either. So I will approve the  
18    attorney's fees component of this settlement as well.

19            OK. So what I propose to do, then, is to issue an  
20    order that are just says that I have approved the settlement  
21    for the reasons stated on the record. I guess I will decide  
22    whether I want to write to just sort of add my two cents to the  
23    growing body of law with respect to waivers of claims and  
24    confidentiality. So I may do that, but maybe I'll do that in a  
25    separate opinion to follow just so everybody gets an order that

FCLALOLHps

1 says I have approved the settlement.

2 Is there anything else we should cover today? Let me  
3 just first ask the lawyers. Mr. Kirschenbaum or Ms. Schulman?

4 MR. KIRSCHENBAUM: Nothing here, your Honor.

5 THE COURT: OK.

6 MR. GERSHENGORN: Nothing from the defense, your  
7 Honor.

8 THE COURT: Plaintiffs, let me just ask any of you, is  
9 there anything else you would like to say before I bid you  
10 farewell and I wish you good luck?

11 MS. LEWIS: No, your Honor, not here.

12 THE COURT: OK.

13 MR. RUSH: No. Mr. Rush speaking. No.

14 THE COURT: And Mr. Lola, you get the last word.

15 MR. LOLA: No, your Honor.

16 THE COURT: All right. Well, I think it is a fair  
17 settlement for the reasons I said. I wish everyone the  
18 happiest of holidays and a happy new year, and good luck in all  
19 your future endeavors.

20 Let me thank the court reporter. If anybody would  
21 like a copy of this transcript, you can take that up through  
22 the court reporter either right after this proceeding or  
23 separately through the website.

24 Thank you very much.

25 o0o